

**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application: Sheri Lynn Baker et al.

Serial No.: 10/683,967

Filed: October 10, 2003

For: Toasted Flavor Additive

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Group Art Unit: 1761

Examiner: Corbin, Arthur L.

Mail Stop Appeals  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**ATTENTION: Board of Patent Appeals  
and Interferences**

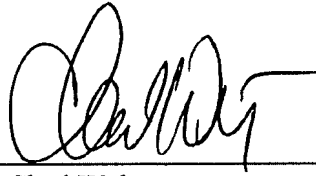
**RESPONSE TO NOTIFICATION OF  
NON-COMPLIANT APPEAL BRIEF (37 C.F.R. § 41.37)**

In response to the Patent Appeal Center's Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed on October 9, 2007, Applicant hereby submits the following:

1. Page 3 (Section IV) of Appellant's Brief, which has been amended to include a statement of the status of all amendments after the final rejections; and
2. Page 5 (Section VI) of Appellant's Brief, which has been amended to exclude any remarks or arguments.

No fees are believed to be due at this time. If, however, any fees are required, I authorize the Commissioner to charge these fees to Carstens & Cahoon LLP, Deposit Account No. 50-0392.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chad Walter', is written over a horizontal line.

Date: November 7, 2007

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#### **IV. STATUS OF AMENDMENTS (37 C.F.R. 41.37(c)(1)(iv))**

The Applicant filed an after-final Amendment/Response on June 6, 2007 after the Examiner's Final Rejection mailed on April 9, 2007. Claims 1, 17 and 44 were amended to address formal objections. Examiner entered the amendments to Claims 1 and 17 but refused to enter the amendment to Claim 44 in the Advisory Action mailed on June 13, 2007.

#### **V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. 41.37(c)(1)(v))**

The claimed invention is related to a toasted corn flavor additive and method for using the additive in a fresh masa dough.

Claim 1 is directed towards a toasted corn flavor additive comprising a regrind of toasted, sheeted, freshly-made masa dough derived from ground whole corn kernels, wherein said regrind has:

an oil content of about 2.0% to about 5.0% by weight (p. 18, ln. 6);

a dimethyl-ethyl-pyrazine concentration such that if said regrind was mixed with a sample of untoasted dry masa chips, said regrind would enable the resulting mixture to exhibit a dimethyl-ethyl-pyrazine concentration of about 0.05 ppm (Fig. 5, numeral 540);

a colorimeter L-value of approximately 49 (pg. 20, ln. 7);

a moisture content ranging from about 0.1% to about 15% by weight (pg. 6, ln. 12).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

### **(37 C.F.R. 41.37(c)(1)(vi))**

1. Claim 44 is rejected under 35 U.S.C. 112 as set forth in paragraph no. 2, Paper No. 20070330.

2. Claims 1, 5 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis et al (4,806,377) as set forth on pages 5-6 of the January 26, 2005 Office action and in paragraph no. 5, Paper No. 101906.

3. Claims 17-22, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Food Product Design" in view of "Salmon Patties" and Ellis et al as set forth on pages 7-8 of said Office action and in the last sentence of paragraph no. 5, Paper No. 101906.

## **VII. ARGUMENT – REJECTIONS UNDER 35 U.S.C. 103(a)**

### **(37 C.F.R. 41.37(c)(1)(vii))**

#### **Group I: Claim 44**

In determining whether the written description requirement is satisfied, the specification as a whole must be considered. *In re Wright*, 866 F.2d 422, 425, 9 U.S.P.Q.2d 1649, 1651 (Fed. Cir. 1989). The requisite description may be made through drawings or formulas. *In re Wolfensperger*, 302 F.2d 950, 955, 133 U.S.P.Q. 537, 541 (C.C.P.A. 1962); *In re Kaslow*, 707 F.2d 1366, 1375, 217 U.S.P.Q. 1089, 1096 (Fed. Cir. 1983).

Referring to Figure 5 of the patent application, reproduced below, the original filed patent application on page 28 beginning at line 7 discloses,

FIG. 5 is a graph comparing the concentrations of dimethyl-ethyl-pyrazine found in standard toasted tortilla chips, untoasted dry masa chips without